

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)	JUDGE PAUL R. MATIA
)	
Plaintiff)	CASE NO. 1:99CV1193
)	
-vs-)	
)	
JOHN DEMJANJUK)	
)	
Defendant)	

FINDINGS OF FACT

I. Defendant's Service as an Armed Guard of Prisoners for the Nazi Government of Germany

A. Trawniki Training Camp

i. Government Exhibit 3 Identifies Defendant

1. It is undisputed that Trawniki, Majdanek, Flossenbürg, and Okzow were places of Nazi persecution, and that anyone who served there aided Nazi persecution.

2. Government Exhibit 3 is a service identity pass from Trawniki Training Camp, issued in the name of Iwan Demjanjuk, identification number 1393.

3. Prior to his naturalization as an American citizen in 1958, Defendant used the name Iwan Demjanjuk. (GX 1-2)

4. Service Identity Pass No. 1393 (GX 3) states that Iwan Demjanjuk was born on April 3, 1920, in "Duboimachariwzi."

5. Defendant was born on April 3, 1920, in Dubovi Makharyntsi (Russian: Dubovye Makharintsy). (GX 85; GX 88; GX 92 at 1065, 1110; GX 93.1 at 25; GX 98 at 6831; Tr. at 444-45).

6. Service Identity Pass No. 1393 (GX 3) states that the name of Iwan Demjanjuk's father was Nikolai.

7. The name of Defendant's father was Mykola (Russian: Nikolai). (GX 85 at 12; GX 88; GX 92 at 1110; GX 98 at 6832; Tr. at 446).

8. Service Identity Pass No. 1393 (GX 3) states that Iwan Demjanjuk's nationality was Ukrainian.

9. Defendant is of Ukrainian national origin. (GX 1.2-1.6; GX 2.4; GX 85 at 19; GX 88; GX 92 at 1065).

10. Service Identity Pass No. 1393 (GX 3) states that Iwan Demjanjuk had gray eyes and dark blonde hair.

11. During World War II, Defendant had gray eyes and dark blonde hair. (GX 2.2 (gray eyes, brown hair); GX 77 (blonde hair); GX 92 at 1108-9 (gray eyes, blonde hair); GX 98 at 7634 (blonde hair); Tr. at 447, 463 (gray eyes, blonde hair)).

12. Service identity Pass No. 1393 (GX 3) states that Iwan Demjanjuk had a scar on his back.

13. During the relevant period, Defendant had a visible scar on his back. (GX 85 at 47-49; GX 88; GX 92 at 1110; Tr. at 447).

14. Service Identity Pass No. 1393 (GX 3) was issued to a Soviet soldier who had been captured by the Germans. (Tr. at 492 (Sydnor)).

15. Defendant was a Soviet soldier who had been captured by the Germans. (GX 85 at 23, 27, 37-38; GX 88; GX 92 at 1066-67; GX 98 at 6860-63).

16. Service Identity pass No. 1393 (GX 3) bears a photograph of a man with the number 1393 on his chest.

17. Defendant has admitted that the photograph on Service Identity Pass No. 1393 resembles him. (GX 89 at 73; GX 92 at 1107; GX 98 at 6971, 7323-25, 7689).

18. Comparison of the photograph on Service Identity Pass No. 1393 (GX 3) to known photographs of Defendant (GX 1.4; GX 2.2; GX 2.5; GX 87; GX 91A) shows a clear resemblance.

19. Service Identity Pass No. 1393 is signed "Demyanyuk" in the Cyrillic alphabet. (Tr. at 101).

20. Three letters of the "Demyanyuk" Cyrillic signature on Government Exhibit 3 lend themselves to forensic handwriting comparison with known usable samples of Defendant's signature, rendered in the Latin alphabet, and all three of these letters show a close similarity to the known samples, although no definitive conclusion could be reached due to the limited number of letters and letter combinations. (Defense Exhibit

D17; Tr. at 135 (Epstein)).

21. Defendant has admitted that the "Demyanyuk" signature on Government Exhibit 3 is "like" he previously wrote his name. (GX 89 at 76).

22. Dr. Julius Grant's testimony in Israel regarding the "Demjanjuk" signature is not reliable or credible. (Tr. at 81-84 (Epstein)).

23. Although Service Identity Pass No. 1393 (GX 3) indicates that "Duboimachariwzi" is administratively subordinated to "Saporosche" (Ukrainian: Zaporizhzhya; Russian: Zaporozh'e), when it is in fact subordinated to Vinnytsya (Russian: Vinnitsa) (Tr. at 648), this error is insignificant considering the other indicia of authenticity.

24. Although Service Identity Pass No. 1393 (GX 3) indicates that Iwan Demjanjuk's height was 175 cm and postwar documents attribute various heights to Defendant, the discrepancies are not significant and can be attributed either to errors in measurement, recording, or self-reporting. See *United States v. Hajda*, 963 F.Supp. 1452, 1458 (N.D. Ill. 1997), *aff'd*, 135 F.3d 439, 444 (7th Cir. 1998).

25. Government Exhibit 3 identifies Defendant and bears his photograph.

ii. Government Exhibit 3 Does Not Identify

Defendant's Cousin, Ivan Andreevich Demjanjuk

26. Defendant's cousin Ivan was born on February 22, 1921 (February 9, 1921, Old Style). (GX 102).

27. The name of Defendant's cousin Ivan's father was Andrey. (GX 102).

28. Defendant's cousin Ivan had dark, "blackish" hair. (GX 100 at 161; Tr. at 459).

29. Defendant has presented no evidence that his cousin Ivan had a scar on his back.

30. The Ukrainian Government affirms that extensive searches have yielded no official record of Defendant's cousin Ivan entering into, serving with, or demobilizing from the Soviet army during World War II. (GX 101). However, Mariya Demjanjuk, a cousin, in a statement April 12, 2001, stated "as far as I know, I.A. Dem'yanyuk was called up for military service before the war, in about 1940." (DX B-21).

31. Until 1999, Defendant never asserted that his cousin Ivan might be the person identified on Government Exhibits 3-9. (GX 107 at 66-68).

32. Defendant has presented no evidence that the photograph on Government Exhibit 3 bears any resemblance to Defendant's cousin Ivan.

33. If the photograph on Service Pass No. 1393 (GX 3) bore any resemblance to Defendant's cousin Ivan, Defendant would have asserted before 1999 that Government Exhibits 3 through 9 might identify his cousin.

34. Although he has said that he knew his cousin personally, and during the prior litigation in the United States and Israel repeatedly saw the photograph on Government Exhibit 3, Defendant stated in July 2000 that he has never seen

a photograph of his cousin Ivan. (GX 100 at 143-44, 170).

35. Government Exhibit 3 does not identify or picture Defendant's cousin Ivan.

iii. Government Exhibit 3 is an Authentic German Wartime Document, Issued to Defendant

36. The Government presented the original of Government Exhibit 3 for examination by the Court.

37. The Government presented three other original Trawniki service passes (GX 45.4 (Juchnowskij), 45.11 (Wolembachow), 45.17 (M. Bondarenko)) for examination by the Court.

38. Government Exhibit 3 is more than twenty years old. (Tr. at 162, 177, 180, 190, Tr. at 433-34, 893).

39. Government Exhibit 3 was found in an archive in Defendant's home oblast of Vinnytsya, Ukraine, which is a location where the document, if authentic, would likely be found. (Tr. at 407-08, 893).

40. Government Exhibit 3 is in a condition that raises no suspicion as to its authenticity. (Tr. at 162, 190, 235, 407-08, 893).

41. Government Exhibit 3 bears characteristics distinctive to Trawniki service identity passes which, taken in conjunction with the circumstances regarding its creation, use, and discovery, demonstrate that it is what it purports to be.

(GX 45; Tr. at 893-94).

42. The paper comprising Government Exhibit 3 is consistent with paper that existed in the early 1940s. (Tr. at 180-81).

43. The printing ink on Government Exhibit 3 matches that on Government Exhibit 45.14. (Tr. 182).

44. The typewriter used to create Government Exhibit 3 was available in Europe in the early 1940s. (Tr. at 244-47).

45. The fountain pen inks used to create Government Exhibit 3 are consistent with those in use in the early 1940s. (Tr. 182-83).

46. The "Streibel" signature on Government Exhibit 3 matches the "Streibel" signatures on Government Exhibits 45.12 (Sidortschuk), 45.14 (Kabirow), 45.15 (Odartschenko), 45.17 (M. Bondarenko), 45.18 (Slowjagin), 45.22 (Swesdun), 45.23 (Poljuchno), 45.24 (Solontschukow), 45.31 (Popeliuk), 45.32 (Nahorniak), and 45.33 (Szurkhan). (Tr. at 41-42; GX 18).

47. The "Teufel" signature on Government Exhibit 3 matches the "Teufel" signatures on Government Exhibits 45.11 (Wolembachow), 45.12 (Sidortschuk), 45.14 (Kabirow), 45.15 (Odartschenko), 45.17 (M. Bondarenko), 45.22 (Swesdun), 45.23 (Poljuchno), 45.31 (Popeliuk), 45.32 (Nahorniak), and 45.33 (Szurkhan). (Tr. at 45; GX 18).

48. "The "Sobibor" outside assignment on Government Exhibit 3 was written by the same person who wrote the "Sobibor" entries on Government Exhibits 45.7 (Danilchenko) and 45.14 (Kabirow). (Tr. at 48).

49. The purple Cyrillic handwriting on Government Exhibit 3 was made by the same person whose handwriting appears on Government Exhibits 45.4 (Juchnowskij), 45.7 (Danilchenko), 45.11 (Wolembachow), 45.12 (Sidortschuk), 45.14 (Kabirow), 45.17 (M. Bondarenko) and 45.32 (Nahorniak). (Tr. at 53; GX 18).

50. The "Bazilevskaya" signature on Government Exhibit 3 matches the Bazilevskaya signature on Government Exhibits 45.4 (Juchnowskij), 45.7 (Danilchenko), 45.11 (Wolembachow), 45.12 (Sidortschuk), 45.14 (Kabirow), 45.15 (Odartschenko), 45.17 (M. Bondarenko), 45.32 (Nahorniak), and 45.33 (Szurkhan). (Tr. at 56; GX 18).

51. Defects in the "Wird der Inhaber dieses Ausweises" stamp used to make the impression on the back of Government Exhibit 3 show that the same stamp was used on Government Exhibits 45.4 (Juchnowskij), 45.11 (Wolembachow), 45.12 (Sidortschuk), 45.14 (Kabirow), 45.15 (Odartschenko), 45.17 (M. Bondarenko), and 45.18 (Slowjagin). (Tr. at 60; GX 18).

52. Defects in the "Dienstszitz Lublin" stamp used to make the impression on the front of Government Exhibit 3 show that the same stamp was used on Government Exhibits 45.4 (Juchnowskij), 45.12 (Sidortschuk), 45.15 (Odartschenko), 45.17 (M. Bondarenko), and 45.23 (Poljuchno). (Tr. at 65-66).

53. Defects in the "Zweigstelle Trawniki" stamp used over the photograph of Defendant on Government Exhibit 3 show that the same stamp was used on Government Exhibits 45.12 (Sidortschuk), 45.17 (M. Bondarenko), and 45.24 (Solontschukow). (Tr. at 68-69, 139-41).

54. There is no evidence of photographic or significant textual substitution on Government Exhibit 3. (Tr. at 80-81, 250).

55. The photograph of Defendant on Government Exhibit 3 was the original photograph placed on the document. (Tr. at 177).

56. Since the photograph on Service Identity Pass No. 1393 (GX 3) shows the Trawniki identification number 1393 on Defendant's chest, was the original photograph on the document, and bears stamp impressions made by a Trawniki stamp, this photograph was placed on Government Exhibit 3 at Trawniki.

57. There is no indication that Government Exhibit 3 was created later than the early 1940s. (Tr. 165).

58. There is no indication that Government Exhibit 3 has been falsely dated or recently created or made to look old. (Tr. 162, 190).

59. Government Exhibit 3 is an authentic German wartime document, issued to Defendant.

iv. Date of Entry into German Service

60. Service Identity Pass No. 1393 (GX3) bears the signature of SS Corporal Ernst Teufel, an official at Trawniki Training Camp. (Tr. at 433).

61. Ernst Teufel was promoted to the rank of SS sergeant on July 19, 1942. (GX 42; Tr. at 433, 487-89.

62. Teufel's rank change demonstrates that Service Identity Pass No. 1393 (GX 3) was issued not much later than July 19, 1942.

63. Defendant arrived at Trawniki not much later than July 19, 1942.

64. Defendant states that he was captured at the Battle of Kerch in the Crimea. (GX 85 at 50-51; GX 89 at 52; GX 92 at 1067, 1090; GX 93.2 at 63; GX 98 at 6860-63).

65. The Battle of Kerch took place in May 1942. (Tr. at 489 and at 976-77).

66. Defendant states that he was confined in the prisoner of war camp at Rovno, Ukraine. (GX 85 at 27; GX 88; GX 98 at 6866-67; Tr. at 976).

67. Thousands of men captured at the Battle of Kerch in May 1942 were confined in the prisoner of war camp at Rovno. (GX 49-50; Tr. at 978-79).

68. Many men captured in the Battle of Kerch in May 1942 were sent from Rovno to Trawniki in June and July 1942 to enter German service. (GX 34; Tr. at 489, 491).

69. Defendant's claim that he was captured at Kerch and confined at Rovno is consistent with the historical evidence

regarding the recruitment of Trawniki guards in mid-1942, as well as with the evidence of his arrival at Trawniki not much later than July 19, 1942.

v. Training and Initial Activities

70. The primary purpose of Trawniki Training Camp was to train men to assist the Nazi government of Germany in implementing its racially motivated policies, including and in particular "Operation Reinhard." (Tr. at 470-72, 571).

71. Operation Reinhard was the Nazi program to dispossess, exploit, and murder Jews in Poland. (GX 65; Tr. at 470-72).

72. The men who arrived at Trawniki Training Camp in mid-1942 entered service in the Guard Forces of the SS and Police Leader in Lublin District. (GX 44-45; Tr. at 466, 474).

73. Upon his arrival at Trawniki Training Camp, Defendant entered service in the Guard Forces of the SS and Police Leader in Lublin District. (Tr. at 474).

74. All newly arrived recruits at Trawniki received permanent personnel identification numbers. (GX 44-45; Tr. at 441-44).

75. At Trawniki Training Camp, Defendant received permanent personnel identification number 1393. (GX 3-6, 8-9).

76. Trawniki Training Camp had a formal system of guard

ranks. (GX 5-6, GX 9; GX 62-64, 67; GX 44.4-44.5).

77. At Trawniki Training Camp, Defendant received the rank of Wachmann (guard private). (GX 4-6, 9; Tr. at 509-10).

78. All Trawniki-trained guards received pay and were eligible for leave. (GX 44.4-44.5; Tr. at 476; Tr. at 9 (Deft's Opening Statement, admitting that the Iwan Demjanjuk who served the Germans "was paid as a guard"))).

79. Defendant received pay and was eligible for leave.

80. Training at Trawniki Training Camp included guard training and military drills. (Tr. at 477).

81. When Defendant arrived at Trawniki Training Camp, the training regimen there commonly included practical experience rounding up and guarding unarmed Jewish civilians. (Tr. at 495-500).

82. During the time Defendant was at Trawniki Training Camp, Jewish civilian prisoners were confined adjacent to the Trawniki Training Camp, where they were guarded by Trawniki recruits. (Tr. at 495).

83. In July 1942, many new recruits left Trawniki for outside assignments. (GX 44.4-44.7; Tr. at 496-98).

84. Assignments away from Trawniki were not always recorded on the Trawniki service identity passes. (GX 45.17; Tr. at 497-99).

B. Okzow Manorial Estate

85. On or about September 22, 1942, while a member of the Guard Forces of the SS and Police Leader in Lublin District,

Defendant was sent from Trawniki to serve as an armed guard at the Okzow Manorial Estate. (GX 3; Tr. at 500).

86. The Okzow Manorial Estate was an SS and police base near Chelm, in the Lublin District of Nazi-occupied Poland. (Tr. at 501).

C. Majdanek Concentration Camp

i. Government Exhibit 4 Identifies Defendant

87. Government Exhibit 4 is a disciplinary report, dated January 20, 1943, recording the apprehension two days earlier of four Trawniki-trained guards serving at Majdanek Concentration Camp for violating a camp quarantine. A notation dated January 21, 1943, indicates that the four men were punished. (Tr. at 409, 508-09).

88. Defendant is identified on the Majdanek disciplinary report (GX 4) by his name ("Deminjuk"), rank, and the identification number 1393.

89. The identification number 1393 shows that the "Deminjuk" on the Majdanek disciplinary report (GX 4) is the same Trawniki-trained guard identified on Trawniki Service Identity Pass No. 1393 (GX 3) .(Tr. at 409-10).

ii. Government Exhibit 4 is an Authentic Wartime Document

90. The Government presented the original of Government Exhibit 4 for examination by the Court.

91. The Majdanek disciplinary report (GX 4) is more than twenty years old. (Tr. at 162, 190 at 409, 893).

92. The Majdanek disciplinary report (GX 4) was found in an archive in Lithuania, a location where the document, if authentic, would likely be found. (Tr. at 410-11, 893).

93. The Majdanek disciplinary report (GX 4) is in a condition that raises no suspicion as to its authenticity. (Tr. at 162, 190; at 411-12, 893).

94. The Majdanek disciplinary report (GX 4) bears characteristics distinctive to German-created wartime documents which, taken in conjunction with the circumstances regarding its creation, use, and discovery, demonstrate that it is what it purports to be. (GX 55, 56; Tr. at 893-94).

95. The Majdanek disciplinary report (GX 4) is a certified copy of an official record held in the Lithuanian Central State Archives in Vilnius, Lithuania.

96. The "Erlinger" signature on the Majdanek disciplinary report (GX 4) matches the "Erlinger" signatures on Government Exhibits 44.9 and 44.10, 44.11, 44.12, 54, 55, and 63; Tr. at 70-73).

97. Defects in the stamp used to make the impression on

the Majdanek disciplinary report (GX 4) shows that the same stamp was used on Government Exhibit 55, another disciplinary report of the same date, housed at the Majdanek Museum. (Tr. at 74-76, at 183, at 510-12).

98. The green ink, violet pencil, and watermark on the Majdanek disciplinary report (GX 4) match the green ink, violet pencil, and watermark on Government Exhibit 55. (Tr. at 169, 171-72, 183).

99. There is no indication that the Majdanek disciplinary report (GX 4) has been falsely dated or recently created or made to look old, and it is consistent with having been created in the 1940s. (Tr. 162, 190).

iii. Service at Majdanek

100. The Majdanek disciplinary report (GX 4) shows that by January 18, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, Defendant was serving as an armed guard at the concentration camp located near Lublin, commonly known as the Majdanek Concentration Camp. (Tr. at 408-10, 435, 508-09).

101. Defendant was disciplined at Majdanek for breaking quarantine. (Tr. at 9 (Deft*s opening statement that the Iwan Demjanjuk who served the Germans was "disciplined by camp leaders")), at 409, 508-09).

102. Thousands of Jews, Polish political prisoners, Soviet prisoners of war, gypsies, and others were confined at Majdanek because they were considered "undesirable" in the Nazi political lexicon. (Tr. at 505).

103. Conditions at Majdanek were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder. (GX 82; Tr. at 505-06).

104. The guards at Majdanek, including the Trawniki-trained guards at the camp, were assigned as part of a rotation which guarded the prisoners and prevented them from escaping. (GX 57; GX 82; Tr. at 507, 510, 515, 520).

105. While assigned to Majdanek, Defendant served as an armed guard of prisoners, whom he prevented from escaping. (Tr. at 518-20).

106. Wartime documents and postwar statements corroborate the authenticity and reliability of the Majdanek disciplinary report (GX 4).

107. Wartime documents place one of the other men named on the Majdanek disciplinary report (GX 4), Zaki Tuktarov, identification no. 1730, within the Trawniki system, and after the war, Tuktarov admitted his service at Majdanek. (GX 82; Tr. at 510, 518).

108. The Majdanek disciplinary report (GX 4) was signed by Hermann Erlinger. Wartime documents show that Hermann Erlinger was an SS sergeant who had been assigned to Majdanek with a detachment of Trawniki-trained guards. (GX 54-

55; Tr. at 409, 508, 869-70).

109. Wartime documents show that Trawniki-trained guards were violating quarantine at Majdanek. (GX 55-56; Tr. at 510-14).

110. Defendant returned from Majdanek to Trawniki Training Camp by March 26, 1943. (GX 5; Tr. at 520-21).

D. SS Special Detachment Sobibor

i. Government Exhibit 5 Identifies Defendant

111. Government Exhibit 5 is a transfer roster showing the transfer of 80 men from Trawniki Training Camp to the Sobibor extermination camp on March 26, 1943. (Tr. at 412, 520-21).

112. Defendant is identified on the Sobibor transfer roster (GX 5) at entry 30 by his name ("Iwan Demianiuk"), rank, date of birth, place of birth, and the identification number 1393.

113. The "Iwan Demianiuk" identified at entry 30 on the Sobibor transfer roster (GX 5) is the same Trawniki-trained guard identified on Service Identity Pass No. 1393 (GX 3), as they share the same name, date of birth, place of birth, and identification number.

ii. Government Exhibit 5 is an Authentic Wartime Document

114. The Sobibor transfer roster (GX 5) is more than twenty years old. (Tr. at 162, 190, at 412, 893).

115. The Sobibor transfer roster (GX 5) was found in the archives of the former KGB in Moscow, Russia, which is a location where the document, if authentic, would likely be found. (Tr. at 414-15, 893).

116. The Sobibor transfer roster (GX 5) is in a condition that raises no suspicion as to its authenticity. (Tr. at 162, 190 at 415, 893).

117. The Sobibor transfer roster (GX 5) bears characteristics distinctive to German-created wartime documents which, taken in conjunction with the circumstances regarding its creation, use, and discovery, demonstrate that it is what it purports to be. (GX 6; GX 64; Tr. at 893-94).

118. The Sobibor transfer roster (GX 5) is a certified copy of an official record held in the Archives of the Federal Security Service of the Russian Federation in Moscow, Russia.

119. There is no indication that the Sobibor transfer roster (GX 5) has been falsely dated or recently created or made to look old, and it is consistent with having been created in the 1940s. (Tr. at 162, 190).

120. The Sobibor transfer roster (GX 5) was created using papers consistent with those in use during the early 1940s. (Tr. at 164).

121. The Sobibor transfer roster (GX 5) was created using a typewriter available in Europe in the early 1940s. (Tr. at 247-48).

122. There is no indication of significant textual substitution or alteration on the Sobibor transfer roster (GX 5). (Tr. at 250).

iii. Service at Sobibor

123. The Sobibor transfer roster (GX 5) shows that on or about March 26, 1943, while a member of the Guard Forces of the SS and Police Leader in Lublin District, Defendant was assigned to the "SS Special Detachment Sobibor." (Tr. at 412, 519-21).

124. Service Identity Pass No. 1393 (GX 3) shows that Defendant began serving at the Sobibor extermination camp no later than March 27, 1943. (Tr. at 523-25)

125. Although the Sobibor transfer roster (GX 5) lists a total of eighty-four men, a notation at the top indicates that the first four men listed did not actually go to Sobibor but stayed behind at Trawniki. Defendant was not one of these four men. (GX 5; Tr. at 521).

126. The service at Sobibor of the men on the Sobibor roster (GX 5) who did go to the camp is extensively corroborated by wartime documentation and postwar statements.

(GX 35, GX 44.8, GX 45.7, GX 45.14, GX 60; Tr. at 521-36).

127. Sobibor, Poland, was an obscure village, with roughly 1,000 occupants during World War II. (Tr. at 451, 572).

128. The Germans constructed in Sobibor one of the three extermination camps for the express purpose of killing Jews as part of Operation Reinhard. (Tr. at 470-72).

129. The extermination camp was a secret operation, not well known during World War II. (Tr. at 451).

130. When a transport arrived at the camp, all of the Trawniki-trained personnel were mobilized for guard duty. (GX 86; Tr. at 574-75).

131. The Trawniki-trained guards assigned to Sobibor met arriving transports of Jews, forcibly unloaded the Jews from the trains, compelled them to disrobe, and drove them into gas chambers where they were murdered by asphyxiation with carbon monoxide. (GX 86; Tr. at 541-43, 574-75).

132. In serving at Sobibor, Defendant contributed to the process by which thousands of Jews were murdered by asphyxiation with carbon monoxide.

133. The Trawniki-trained guards assigned to Sobibor also guarded a small number of Jewish forced laborers kept alive to maintain the camp, dispose of the corpses, and process the possessions of those killed. The guards compelled these

prisoners to work, and prevented them from escaping. (GX 44.8, GX 86; Tr. at 543).

134. While assigned to Sobibor, Defendant guarded Jewish forced laborers, compelled them to work, and prevented them from escaping. (Tr. at 551).

135. Defendant returned from Sobibor to Trawniki by October 1, 1943. (GX 6; Tr. at 549-50).

E. Flossenbürg

i. Government Exhibits 6 through 9 Identify Defendant

136. Government Exhibit 6 is a transfer roster dated October 1, 1943, documenting the transfer of 140 men from Trawniki to Flossenbürg concentration camp. (Tr. at 415-16).

137. Defendant is identified on the Flossenbürg transfer roster (GX 6) at entry 53 by his name ("Iwan Demianjuk"), rank, date of birth, place of birth, and the identification number 1393.

138. The "Iwan Demianjuk" identified at entry 53 on the Flossenbürg transfer roster (GX 6) is the same Trawniki - trained guard identified on Service Identity Pass No. 1393 (GX 3), as they share the same name, date of birth, place of birth, and identification number.

139. Government Exhibit 7 is a Flossenbürg weapons log, dated April 1, 1944, documenting the weapons issued to guards at the camp. Page 69 of the weapons log shows that "W[achmann] Demianiuk" had a rifle issued on October 8, 1943, and page 25 shows that "Demianiuk" of the "guard block" had a bayonet issued that same day. (Tr. at 419-21, 594).

140. The "Demianiuk" identified in the weapons log (GX 7) is the same Trawniki-trained guard identified at entry

30 of the Flossenbürg transfer roster (GX 6), as the log shows that "Demianiuk" received a rifle and bayonet at Flossenbürg one week after the transfer roster shows him being assigned there.

141. Government Exhibit 8 is a daily duty roster from Flossenbürg indicating that on October 4, 1944, "Demenjuk 1393," was assigned to guard the Bunker Construction Detail at the camp while armed with a rifle. (Tr. at 423-24).

142. The "Demenjuk 1393" listed on the Flossenbürg daily duty roster (GX 8) is the same Trawniki-trained guard identified at entry 30 of the Flossenbürg transfer roster (GX 6), as both share the same Trawniki identification number of 1393.

143. Government Exhibit 9 is an undated roster listing 117 guards at Flossenbürg concentration camp. (Tr. at 428-29).

144. Listed at entry 44 on the undated roster (GX 9) is Wachmann "Demenjuk," identification number 1393.

145. The "Demenjuk" identified at entry 44 on the undated roster (GX 9) is the same Trawniki-trained guard identified at entry 30 of the Flossenbürg transfer roster (GX 6), as both share the same Trawniki identification number of 1393. (Tr. at 430-31)

146. Government Exhibit 9 contains a notation that the man listed at entry 116, Ilja Baidin, had been killed on December 10, 1944. (Tr. at 602-603). It also lists as present at Flossenbürg a number of men who were transferred away from the main camp on January 15, 1945. (GX 39; Tr. at 604-05). Therefore, Government Exhibit 9 was created sometime between December 10, 1944 and January 15, 1945.

ii. Government Exhibits 6 through 9 are Authentic
Wartime Documents

147. The Government presented the originals of Government Exhibits 6 through 9 for examination by the Court.

148. Government Exhibits 6 through 9 are more than twenty years old. (Tr. at 162, 190, at 415, 419, 423, 426, 430, 604-05, 893).

149. Government Exhibit 6 was found in the archives of the former KGB in Moscow, Russia, which is a location where the document, if authentic, would likely be found. (Tr. 414-15, 586, 893).

150. Government Exhibits 7 through 9 are held in archives in Berlin, Germany, a location where the documents, if authentic, would likely be found. (GX 7-9; Tr. at 422-23, 893).

151. Government Exhibits 6 through 9 are in conditions that raise no suspicion as to their authenticity. (GX 6-9); Tr. 415, 418, 423, 428, 431, 893).

152. Government Exhibits 6 through 9 bear characteristics distinctive to German-created wartime documents which, taken in conjunction with the circumstances regarding their creation, use, and discovery, demonstrate that they are what they purport to be. (GX 5; GX 64; GX 68; Tr. at 893-94).

153. Government Exhibit 6 is a certified copy of an official record held in the Archives of the Federal Security

Service of the Russian Federation in Moscow, Russia.

154. Government Exhibits 7 through 9 are certified copies of official records held in the German Federal Archives in Berlin, Germany.

155. There is no indication that Government Exhibits 6 through 9 have been falsely dated or recently created or made to look old, and they are consistent with having been created in the 1940s. (Tr. 162, 190).

156. The same black duplicating ink was used to create Government Exhibits 6 and 64. (Tr. at 184).

157. The gray pencil entries on Government Exhibit 7 match the pencil used to create Government Exhibit 55. (Tr. at 185).

158. The typing on Government Exhibits 6, 8, and 9 was made by typewriters available in Europe in the early 1940s. (Tr. at 248-50).

159. There is no indication of significant textual substitution or alteration on Government Exhibits 6, 8, and 9. (Tr. at 250).

160. There is no indication that pages 25 and 69 of Government Exhibit 7 were removed or inserted, the thickness of those pages matches surrounding pages, the printing inks on those pages are found on surrounding pages, and the "Demianiuk"

entries on those pages were not subsequently added to the document. (Tr. 186-87, 234).

161. The "Skierka" signature on Government Exhibit 8 matches the "Skierka" signature on Government Exhibit 71 (Tr. at 78).

iii. Service at Flossenbürg

162. On or about October 1, 1943, Defendant was transferred from Trawniki to Flossenbürg Concentration Camp, where he became a member of the SS Death's Head Battalion Flossenbürg. (GX 6-9; GX 37; Tr. at 415, 575-76).

163. The service of the men on the Flossenbürg roster (GX 6) at the Flossenbürg Concentration Camp is extensively corroborated by wartime documentation and postwar statements. (GX 37; GX 67; GX 68; GX 77; GX 86; Defense Exhibit B1).

164. The SS Death's Head Battalion Flossenbürg was the guard formation responsible for guarding Flossenbürg Concentration Camp. (GX 73; Tr. at 576-77, 583, 588).

165. Thousands of Jews, gypsies, Jehovah's Witnesses, perceived asocials, and other civilians were confined at Flossenbürg on the basis of their race, religion, or national origin. (GX 72, 73; Tr. at 579).

166. Conditions for the prisoners at Flossenbürg Concentration Camp were inhumane, and the prisoners there were subjected to physical and psychological abuse, including forced labor and murder. (GX 72, 73; Tr. at 583, 586).

167. The guards of the SS Death*s Head Battalion Flossenbürg participated in a guard rotation through which they guarded the camp*s prisoners and prevented them from escaping. (Tr. at 426-27, 584-86).

168. While a member of the SS Death*s Head Battalion Flossenbürg, Defendant served as an armed guard of prisoners, whom he prevented from escaping. (GX 8; Tr. at 424-27, 584-86).

169. On October 3, 1944, as part of the guard rotation, Defendant was expressly assigned to guard prisoners the following day as part of the "Bunker Construction Detail" at Flossenbürg. (GX 8; Tr. at 424-25).

170. The SS gave members of the SS Death*s Head Battalion Flossenbürg blood-type tattoos under their left arms. (GX 77, GX 86; Tr. at 589).

171. Defendant admits having received a blood-type tattoo although he claims it was at Graz, Austria. GX 89 at 79-80; GX 92 at 1070-71, 1105; GX 98 at 6886-89, 6891, 6912-13, 6984, 7000-01, 7035-36, 7642).

172. While a member of the SS Death*s Head Battalion Flossenbürg, Defendant received a blood-type tattoo under his left arm. (GX 77; GX 86).

173. Defendant remained a member of the SS Death*s Head Battalion at Flossenbürg Concentration Camp until at least

December 1944. (GX 9; GX 38-39; GX 46).

II. Capture and Use of Government's Wartime Documents

174. At the end of World War II, the Soviet and American armies seized German-created wartime documents abandoned by retreating and defeated German forces. (Tr. at 408, 422-23).

175. The surviving records of Flossenbürg Concentration Camp were seized by the United States Army when it overran the territory in which the camp was located. (Tr. at 422-423).

176. The surviving records of Trawniki and Majdanek were seized by the Soviet Army when it overran the territories in which the camps were located. (Tr. at 408).

177. American-seized German wartime documents were used in postwar Nazi war crimes investigations and trials, after which they were held in United States custody until the 1960s. (Tr. at 422-23, 427-28, 796-97).

178. In the 1960s, the United States returned its captured German wartime documents to West Germany, where they have since been housed in the German Bundesarchiv (Federal Archives). (Tr. at 422-23, 427-28).

179. The Soviets used captured German wartime documents in investigations and trials of Soviet citizens who were accused of collaborating with the Nazis. (GX 45.3-45.4,

45.6-45.7, 45.10-45.15, 45.17, 45.19-45.21, 45.25, 45.28,
45.31-45.33, 45.37-45.40; GX 60, 62; Tr. at 411, 414-15, 437,
606, 785).

180. Soviet authorities sent German wartime documents to the regional prosecutors who were handling these investigations and trials. (Tr. at 411).

181. Many captured German documents remain in the regional archives of former Soviet states where they were sent in connection with postwar investigations and trials. (Tr. at 411, 414-15, 437).

182. The German Bundesarchiv, the archives of the FSB (former KGB) in Moscow, and regional archives in former Soviet territories are locations where authentic, captured German wartime records would likely be found today. (Tr. at 408, 410-411, 414, 418, 422; *see also United States v. Kairys*, 782 F.2d 1374, 1379-80 (7th Cir. 1986), *cert. denied*, 476 U.S. 1153 (1986); *United States v. Szehinskyj*, 104 F.Supp.2d 480, 489-90 (E.D. Pa. 2000), *aff'd*, 2002 WL 15374 (3d Cir. Jan. 7, 2002); *United States v. Lileikis*, 929 F.Supp. 31, 38 n.12 (D. Mass. 1996); *United States v. Palciauskas*, 559 F.Supp. 1294, 1296 n.2 (M.D. Fla. 1983), *aff'd*, 734 F.2d 625 (11th Cir. 1984); *United States v. Kwoczak*, No. 97-5632-ALL (E.D. Pa. July 19, 2000), Tr. at 5.

183. The Government arranged for the defense team and forensic experts to examine the originals of Government Exhibits 3 through 9 and all comparison samples in the United

States, in Moscow, Russia, and in Berlin, Germany. (Tr. at 35, 81, at 160, 162, at 243, 251-52.)

III. Recollections of Former Trawniki-Trained Guards

A. Ignat Danilchenko

184. Ignat Danilchenko was a Trawniki-trained guard at Sobibor and Flossenbürg. (GX 5-6; GX 35-38; GX 45.7; GX 77; GX 86; GX 87).

185. Danilchenko recalled Defendant as a guard at Sobibor and Flossenbürg. (GX 77; GX 86; GX 87).

186. Danilchenko identified photographs of Defendant. (GX 87).

187. Danilchenko recalled that Defendant received an SS blood type tattoo while in German service. (GX 77; GX 86).

188. Thirty-four years after the war, Danilchenko estimated the difference in height between himself and Defendant as approximately one inch. (GX 86).

189. The difference between the heights indicated for Danilchenko and for Defendant on their Trawniki service passes is approximately one inch. (GX 3; GX 45.7).

B. Ivan Ivchenko

190. Ivan Ivchenko was a Trawniki-trained guard at Sobibor. (GX 5; GX 35; GX 77; Defense Exhibit B3).

191. Thirty-four years after the war, Ivchenko picked

out a photograph of Defendant as that of a Trawniki-trained guard whose face he knew but whose name and details of service he could no longer remember. (Defense Exhibit B3).

C. Vasilij Litvinenko and the Derivative "Ivan (Andreevich) Dem'yanyuk" Record (Defense Exhibit B2)

192. Defense Exhibit B2 is an undated Soviet document bearing the name "Ivan Dem*yanyuk" and the words "year of birth 1918-1919" and "Travniki, Lyublin, L*vov," while citing a "statement of Litvinenko" as the evident source.

193. Defense Exhibit B2 also bears the patronymic "Andreevich" and the information "1920, born, resident of the village of Dubovye Makharintsy, Kazatin Rayon, Vinnitsa Oblast." These entries were made in a second handwriting.

194. The information in the first handwriting on Defense Exhibit B2 purports to derive from an interrogation of Vasilij Nikiforovich Litvinenko, dated June 28, 1949 (Defense Exhibit B1). In that interrogation, Litvinenko stated that he recalled an individual named Ivan Dem*yanyuk, whose patronymic he did not know and whose date of birth he estimated to be between 1918 and 1920. According to Litvinenko, this person had two false white-metal teeth in his upper jaw. Although Litvinenko and Defendant served together at Trawniki Training Camp and Flossenbürg Concentration Camp (GX 6-7, 9); GX 37, Litvinenko recounted instead that Ivan Dem*yanyuk served with

him at Trawniki, in the Lublin Detachment (a detachment of Trawniki-trained guards guarding a forced labor camp in Lublin, Tr. at 497-498, and at L*vov.

195. There is no evidence to substantiate Litvinenko*s statement that an Iwan Dem*yanyuk served in the Lublin Detachment or at L*vov, as recorded in Litvinenko*s interrogation from 1949 and copied onto Defense Exhibit B2.

196. Because Litvinenko*s drinking during World War II reached the point where he sold his pants for vodka (GX 103), his unsubstantiated postwar recollection that an Ivan Dem*yanyuk served in the Lublin Detachment and at L*vov is not significantly credible.

197. Litvinenko*s unsupported claim to have remembered detailed information about the dental work of no fewer than nine of the twenty-three people he named in his interrogation, including Ivan Dem'yanyuk, is not credible because if that many people actually had false white metal teeth, it would not have been unusual enough to remember.

198. Defendant has presented no evidence to show that the annotation in the second handwriting on Defense Exhibit B2 supports his theory that Litvinenko was recalling Defendant*s cousin Ivan.

199. If Litvinenko*s statement were reliable and

referred to Defendant*s cousin Ivan, the information in that statement regarding the man*s wartime service and physical attributes would be inconsistent with the information on those subjects contained in Government Exhibits 3 through 9, and Defendant has presented no evidence that could reasonably reconcile that inconsistency.

200. A memorandum created by the KGB in March 1969 states that Ivan Dem*yanyuk, whose name emerged from evidence in the Litvinenko case, could not be located in his hometown. (Defense Exhibit B17).

201. Defendant*s cousin Ivan lived in Dubovi Makharyntsi from the mid-1950s until his death on January 8, 1970. (GX 101; Defense Exhibit B21).

IV. The Mistaken Identity/Identity Theft Theory

202. The detailed information identifying Defendant on Government Exhibits 3 through 9 shows that Defendant is not the victim of mistaken identity.

203. The photograph of Defendant on Government Exhibit 3, which is original to the card and which was affixed at Trawniki, shows that Defendant was not the victim of identity theft.

204. The notation on Government Exhibit 3 that the bearer had a scar on his back shows that Defendant was not the victim of identity theft.

205. Defendant has provided no credible evidence that his cousin Ivan, or any other person, stole his identity.

206. While Defendant has presented evidence regarding an individual who served at Trawniki under a false name (Defense Exhibit B8), he has presented no evidence that the man

stole the identity of another person.

207. Defendant has presented no evidence that any Trawniki recruit stole the identity of a real person and served the Germans as that person.

208. Defendant has presented no evidence that bureaucratic error at Trawniki resulted in any Trawniki recruit serving the Germans under a mistaken identity.

V. The Forgery Theory

209. Defendant has presented no credible forensic or other evidence that Government Exhibits 3 through 9 are other than what they purport to be.

210. Defendant has presented no credible evidence that any of Government Exhibits 3 through 9 was forged.

211. The investigative records of the former KGB disprove the theory of forgery.

212. On March 12, 1948, a translator for the Soviet Ministry for State Security (MGB), predecessor of the KGB, translated the contents of Service Identity Pass No. 1393 (GX 3) directly onto the document itself. See GX 3, back cover, dated March 12, 1948.

213. This MGB translator followed the same procedure with at least twenty-three other Trawniki service passes. (GX 45.3-45.4, 45.6-45.7, 45.10-45.15, 45.17, 45.19-45.21, 45.25, 45.28, 45.31-45.33, 45.37-45.40).

214. On August 31, 1948, the MGB distributed a wanted list, classified "top secret," throughout the Soviet Union, with the names and identifying data of 100 suspected former Trawniki-trained guards, including names and data clearly derived from Government Exhibits 3 and 45.10. (GX 76, 76A).

215. The wanted list of August 31, 1948, establishes that, as of that date, the Soviets had not developed their investigation of Iwan Demjanjuk, identification number 1393, beyond the information in Government Exhibits 3, 5, and 6, as they remained uncertain whether the man they were seeking had been born in Zaporizhzhya or Vinnytsya Oblast.

216. The fact that the Soviets created and circulated this wanted list shows that in 1948 they regarded the underlying captured German documents to be authentic evidence of the wanted man's wartime activities, and were searching for Defendant in the Soviet Union.

217. On July 29, 1952, the MGB distributed a second "top secret" wanted list naming Defendant and containing the same particulars of service as Government Exhibits 76 and 76A. (GX 79, 79A).

218. The second wanted list establishes that by July 29, 1952, the Soviets had still not located Iwan Demjanjuk, identification number 1393, but their investigation of him had

developed to the point of determining his origin in Vinnytsya Oblast, as well as the names and particulars of his parents and sister.

219. The second wanted list also includes a reproduction of Defendant's photograph from Service Identity Pass No. 1393 (GX 3).

220. The fact that the Soviets created and circulated the second wanted list shows that in 1952 they continued to regard the underlying captured German documents as authentic, and as reflecting Defendant's wartime activities.

221. Neither wanted list contains any indication that the Soviets were searching for Defendant on the basis of his purported service in the Shandruk and Vlasov armies.

222. Defendant has presented no evidence that the Soviets were aware that Defendant was alive or living in the United States before 1956. (Defense Exhibit F9)

223. Defendant has presented no evidence to show that the Soviets ever forged documents to frame him.

224. Defendant has offered no evidence to show that the Soviets knowingly relied on forged documents as the basis of their own internal "top secret" wanted lists.

225. Defendant has offered no evidence to show why the Soviets made no use of their purported forgeries until the

1970s when Government Exhibit 3 was first disclosed, while keeping additional evidence against him secret until after their regime had collapsed.

226. There is no evidence that the Soviets ever forged or altered documents to implicate any American for Nazi-era crimes. (Tr. at 437-38 (Sydnor), 959 (Menning)); see also *United States v. Szebinskyj*, 104 F.Supp.2d at 490 (no evidence the Soviets ever falsified a document to implicate a Ukrainian living in North America); *United States v. Stelmokas*, No. 92-3440, 1995 WL 464264, at *8 (E.D. Pa. Aug. 2, 1995), *aff'd*, 100 F.3d 302 (3d Cir. 1997), *cert. denied*, 520 U.S. 1242 (1997).

227. Defendant testified in 1981 (Trial Testimony March 4, 1981 - GX 92) that he arrived in Heuberg in 1944 when it was snowing, so it was probably in December 1944 if he is to be believed. He claims he was to become part of a pro-German army under a General Vlasov. At other times Defendant claimed to have arrived at Heuberg at the end of 1943 or beginning of 1944 (1984 trial testimony) or spring or summer 1944 (1987 trial testimony). The government claims these earlier dates are historically impossible because Vlasov's army did not begin to form until January 1945. However, defendant introduced evidence which the Court is inclined to credit that Vlasov's army may very well have been in various stages of formation

even during 1944 (1990 statement of Josephina Dolle). But even if this is so, Defendant's first trial testimony was that he arrived in Heuberg in December 1944 or January 1945, and the Court is inclined to believe this testimony over defendant's later versions.

228. Even if defendant's claims regarding his purported service in Heuberg are credible, they do not explain his whereabouts prior to December 1944.

VII. Defendant's Immigration to the United States

229. In 1948, Congress enacted the Displaced Persons Act, Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, *as amended*, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 ("DPA"), to assist European refugees rendered homeless by the war to emigrate to the United States. *See Fedorenko v. United States*, 449 U.S. 490, 496-97 (1981).

A. International Refugee Organization

230. The United States Displaced Persons Commission ("DPC") administered the DPA and determined whether applicants were eligible for displaced person status under the DPA. (Tr. at 901).

231. Before applicants could apply to the DPC for eligibility determinations, the DPA required that they first seek and obtain certification from the International Refugee

Organization ("IRO") that they were displaced persons and "of concern" to the IRO by virtue of their wartime and postwar experiences, as defined in Annex I of the IRO Constitution. See DPA, §10, 62 Stat. 1013; *United States v. Kowalchuk*, 773 F.2d 488, 492-94 (3d Cir. 1985) (*en banc*), *cert. denied*, 475 U.S. 1012 (1986) (GX 90 at 9-10, 34-35; Tr. at 903-04).

232. Persons who had "assisted the enemy in persecuting civil populations of countries, Members of the United Nations . . ." were not "of concern" to the IRO. Annex I, Part II, Section 2(a), *reprinted in* 62 Stat. 3037 at 3051-52 (1948). (GX 90 at 15-17, 20-21 (Tr. at 929-33) and Exhibit 1 thereto, at 151)).

233. An applicant who served as an armed guard of civilians imprisoned at the Trawniki Labor Camp, the Majdanek concentration camp, the Sobibor extermination camp, or the Flossenbürg Concentration Camp would not have been "of concern" to the IRO and, therefore, would have been ineligible for IRO assistance. (GX 90 at 34-35 (Tr. at 936-37)).

234. To apply for IRO services, an applicant would provide information specified on an Application for Assistance Questionnaire to the PCIRO, which requested personal information including name, place of birth, family unit,

information regarding when and how the applicant came into Germany, places the applicant had lived in Germany, the type of identity documents the applicant possessed, schooling and general health questions. (GX 90 at 23 (Tr. at 933), and Exhibit 2 thereto; GX 1.5).

235. The Application for Assistance form also requested information about an applicant's wartime whereabouts and activities in detail. (GX 90 at 22-23 (Tr. at 934) and Exhibit 2 thereto; GX. 105).

236. Information on the Application for Assistance form was obtained from the applicant. (GX 90 at 23-24 (Tr. at 933-34)).

237. Applicants were interviewed and the Application was completed with information supplied by the applicant. (GX 90 at 23-24 (Tr. at 933-34)).

238. If an applicant disclosed any information during the interview which raised any suspicion regarding eligibility, further investigation would be conducted. (GX 90 at 24-27).

239. Determinations of eligibility were made by IRO eligibility officers. (GX 90 at 9).

240. The major duty of eligibility officers was to determine whether an applicant was eligible for IRO assistance. (GX 90 at

9).

241. It was an applicant's burden to establish that he was "of concern" to the IRO and eligible for displaced person status. An IRO determination of eligibility was a prerequisite to resettlement in the United States under the DPA. (GX 90, Exhibit 1 thereto at 6).

242. An applicant who obtained IRO certification could then apply to the DPC. See *Kowachuk*, 773 F.2d at 492. (GX 90 at 34-35; Tr. at 906).

243. Between 1947 and 1948, the IRO created a *Manual for Eligibility Officers* to be used by IRO eligibility officers to achieve uniformity in eligibility determinations. (GX 90 at 20-22, 110).

244. In March 1948, Defendant submitted an "Application for Assistance" to the Preparatory Commission of the International Refugee Organization (PCIRO). (GX 1.5).

245. In his Application for Assistance, Defendant falsely represented his employment and residences from 1942 to 1944, stating that from April 1937 to January 1943 he was a driver in "Sobibor, Che»m, Poland," that from January 1943 to October 1944 he was a worker for the Port of Pilau, Germany, and that from October 1944 to May 1945 he was a worker in Munich, Germany. (GX 1.5).

246. Defendant denies that he was ever present in the village of Sobibor, Poland. (GX 85 at 28, 57; GX 89 at 38-39; GX 92 at 1085).

247. Defendant's various and inconsistent explanations regarding the reason he wrote "Sobibor, Chelm, Poland" on his PCIRO application are not credible. GX 89 at 38-39 (asked another displaced person for a "Polish residence and they suggested Sobibor"); GX 93.2 at 85-88 ("I looked at the map and I did find a location called Sobibor," and "I looked by myself"); GX 93.2 at 85-88 (the place he found might have been Sambor in Eastern Galicia, but the official helping him fill out his forms erroneously wrote it as "Sobibor"); GX 98 at 6923-24, 7482-83 (Defendant and some friends then looked on a map and found "Sombor," which he reported to a secretary).

248. In his Application for Assistance, Defendant concealed that he served with the Guard Forces of the SS and Police Leader in Lublin District at the Trawniki, Majdanek, and Sobibor camps, and the SS Death's Head Battalion at Flossenbürg Concentration Camp, from 1942 to 1944. (GX 1.5).

B. Displaced Persons Commission Final Report

249. In October 1950, Defendant sought a determination from the DPC that he was a Displaced Person as defined in the DPA, and therefore eligible to immigrate to the

United States under the DPA. (GX 2.1; Tr. at 912).

250. The DPA required that applicants undergo a background investigation. See DPA, § 10, 62 Stat. 1013; *United States v. Palciauskas*, 734 F.2d 625, 626 (11th Cir. 1984); (Tr. at 907).

251. Generally, DPC Case Analysts did not interview the applicants, but referred cases to the United States Army Counter Intelligence Corps (CIC) to conduct further investigation and interview applicants. See *Palciauskas*, 734 F.2d at 626; *United States v. Leprich*, 666 F.Supp. 967, 970 (E.D. Mich. 1987); 13 Fed. Reg. 5821 (October 6, 1948), reprinted at 8 C.F.R. 700.7(b); Executive Order 10003; Executive Order 10131, 15 Fed. Reg. 3859 (June 17, 1950) (superseding E.O. 10003)); (Tr. at 907-09).

252. In conducting its investigation, the CIC's primary source of information was the applicant himself, and the CIC investigator would personally interview the applicant, under oath, with a translator capable of communicating in the applicant's native language, if necessary. *Leprich*, 666 F.Supp. at 970.

253. As part of the DPCs eligibility review process, standard procedure called for DPC Case Analysts to review the file of an applicant, which included information provided by the applicant as well as IRO materials and information received from the CIC and other agencies. (Tr. at 910).

254. After receiving a report from the CIC and reviewing the information contained in an applicant*s file, DPC Case Analysts prepared a report of their findings regarding each applicant relying on such information. (Tr. at 910).

255. Under Section 13 of the DPA, an applicant who advocated or assisted in the persecution of any person because of race, religion, or national origin was ineligible for admission to the United States. (DPA, § 13, 64 Stat. 219, 227); (Tr. at 917-18).

256. Under Section 13 of the DPA, a member of, or a participant in, a movement hostile to the United States or to the form of Government of the United States, was ineligible for admission to the United States. (DPA, § 13, 64 Stat, at 227); (Tr. at 919-20).

257. Section 10 of the DPA, 62 Stat. 1013, provided, "Any person who shall willfully make a misrepresentation for the purpose of gaining admission into the United States as an eligible displaced person shall thereafter not be admissible

into the United States." (Tr. at 913-14).

258. If in 1950 an applicant stated that he had misrepresented his wartime whereabouts and activities out of a fear of repatriation, DPC Analyst Curry would not have believed him. (Tr. at 917); see *Fedorenko v. United States*, 449 U.S. at 508 n.26 (1981).

259. Applicants bore the burden of proof in establishing their eligibility as displaced persons under the DPA. (DPA § 10, 63 Stat. 1013).

260. The DPC generally did not duplicate the CIC*s work by interviewing the applicants again, but relied on the information contained in the CIC report and the IRO materials. See *United States v. Osidach*, 513 F.Supp. 51, 101 (E.D. Pa. 1981). (Tr. at 909).

261. The information in the "History" section of the DPC Final Report was reported from documentation received from the IRO. (Tr. at 913).

262. DPC Case Analyst Leo Curry was the DPC official who considered Defendant*s application for displaced person status. (GX 2.1).

263. If DPC Case Analyst Curry had learned that an applicant had served as a guard at a Nazi concentration or extermination camp, or in the Guard Forces or the SS Death*s Head Battalion Flossenbürg during World War II, Mr. Curry would

have found such an applicant ineligible for displaced person status for assisting in the persecution of civilians within the meaning of Section 13 of the DPA. (Tr. at 918-21).

264. If DPC Case Analyst Curry had learned that an applicant had served as a guard at a Nazi concentration or extermination camp, or in the Guard Forces or the SS Death*s Head Battalion Flossenbürg during World War II, Mr. Curry would have found such an applicant ineligible for displaced person status for being a member of or participant in a movement hostile to the United States within the meaning of Section 13 of the DPA. (Tr. at 919-21).

265. In seeking a determination that he was an eligible displaced person, Defendant misrepresented his employment and residences from 1942 to 1944, stating that he worked on a farm in Sobibor, Poland, from 1936 to September 1943, that he worked at the harbor at Danzig from September 1943 until May 1944, and that he was a railway worker in Munich, Germany, from May 1944 to May 1945. (GX 2.1).

266. In seeking a determination that he was an eligible Displaced Person, Defendant concealed that he served with the Guard Forces of the SS and Police Leader in Lublin District at Trawniki, Okzow, Majdanek, and Sobibor, and the SS Death*s Head Battalion at Flossenbürg Concentration Camp from

1942 to 1944. (GX 2.1).

267. The DPC Final Report indicates that Defendant at no point informed the CIC or DPC that he was a prisoner of war, lived in Graz or Heuberg, or served as a member of Shandruk's Army or Vlasov's Army, as he now claims. (GX 2.1; Tr. at 908-10).

268. If DPC Case Analyst Curry had learned that an applicant had willfully misrepresented his wartime whereabouts and activities, Mr. Curry would have found the applicant ineligible for displaced persons status under the DPA (Tr. at 914-15).

269. In October 1950, relying upon Defendant's representations, DPC Case Analyst Curry certified that Defendant was an eligible displaced person. (GX 2.1).

270. Certification by the DPC was a prerequisite to consideration for a visa in 1951. (GX 91 at 843-44; Tr. at 911).

C. Visa Application

271. On December 27, 1951, Defendant filed an Application for Immigration Visa and Alien Registration with the American Consulate in Stuttgart, Germany, to obtain a non-quota immigration visa to the United States under the DPA. (GX 2.2; GX 91 at 851).

272. The duties of a United States Vice Consul

serving in Germany in 1951 included the issuance or rejection of immigration visas to applicants including displaced persons who sought to enter the United States under the Displaced Persons Act of 1948. (GX 91 at 842-43 (Tr. at 941-42)).

273. Vice Consuls made independent determinations under the DPA and other immigration laws as to whether an applicant was eligible for a visa. (GX 91 at 844-46 (Tr. at 944-45)).

274. In connection with his immigration application, Defendant was interviewed by U.S. Vice-Consul Harold Henrikson. (GX 91 at 851 (Tr. at 943-44)).

275. If the applicant could not communicate in English, an interpreter qualified in the native language of the applicant or other language which the applicant spoke assisted with the interview. (GX 91 at 844-46 (Tr. at 941-45)).

276. Mr. Henrikson would review the entire visa application with the applicant, asking the applicant questions covering all of the entries made on the visa application. (GX 91 at 847 (Tr. at 945)).

277. Mr. Henrikson also asked applicants about their wartime activities and their membership in Nazi organizations, and specifically questioned them about military service if they were of the right age. (GX 91 at 847-48 (Tr. at 945-46)).

278. Mr. Henrikson had the applicant swear to the truth of the statements made in the written visa application and orally during the interview before issuing a visa. (GX 91 at 851 (Tr. at 943-44)).

279. Mr. Henrikson would have denied a visa to an applicant who lied on his visa application. (GX 91 at 849-50 (Tr. at 946-47)).

280. On his visa application, Defendant swore that he resided in Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945. (GX 2.2).

281. Defendant admits that his sworn statements on his visa application about his residences and occupations from 1942 to 1945 were not true. (GX 88).

282. On his visa application, Defendant concealed that he was a member of the Guard Forces at Trawniki, Okzow, Lublin, and Sobibor, and of the SS Death*s Head Battalion at Flossenbürg, from 1942 to 1944. (GX 2.2).

283. Information about Defendant*s wartime service in the SS Guard Forces at Trawniki, Majdanek and Sobibor, and in the SS Death*s Head Battalion at Flossenbürg, would have had a natural tendency to influence the decision of Mr. Henrikson as to whether to grant Defendant a visa. (GX 91 at 854-55 (Tr. at 948-49)).

284. Had Defendant told Mr. Henrikson the story he tells today--that the information in the visa application was incorrect, and that he was a member of Vlasov*s Army from 1944

to 1945--Mr. Henrikson would not have approved Defendant*s visa. (GX 91 at 855, 859-60 (Tr. at 946, 949)).

285. Based on Defendant*s representations, Mr. Henrikson approved Defendant*s application for an immigrant visa. (GX 91 at 851).

286. On the basis of that immigrant visa, Defendant entered the United States at the Port of New York on or about February 9, 1952. (GX 2.2).

D. Defendant's Naturalization

287. On August 12, 1958, Defendant signed and filed a Petition for Naturalization with the United States Immigration and Naturalization Service and orally swore to the truth of the information he provided therein. (GX 2.4).

288. On November 14, 1958, the United States District Court for the Northern District of Ohio granted Defendant*s Petition for Naturalization and issued him Certificate of Naturalization No. 7997497. (GX 2.5).

289. On November 14, 1958, Defendant legally changed his name from Iwan Demjanjuk to John Demjanjuk. (GX 2.4, 2.5; GX 85 at 3-4).

VIII. Other Findings of Fact

290. Any variation in the transliterated spelling of Defendant*s name on Government Exhibits 3 through 9 is

insignificant, as the identification number, date of birth, and place of birth confirm that all of the documents refer to the same individual.

291. Defendant*s continued, paid service for the Germans, spanning more than two years, during which there is no evidence he attempted to desert or seek discharge, was willing.

292. The documents listed on Government Exhibits 104 and 105 are more than twenty years old, found in locations where, if authentic, they would likely be, and are in such conditions as to create no suspicion as to authenticity. (Tr. at 893).

293. The documents listed on Government Exhibits 104 and 105, taken in conjunction with the circumstances under which they were discovered, used, and created, bear characteristics distinctive to the types of materials they purport to be. (Tr. at 893-94).

294. During the proceedings against Defendant in Israel and the United States, Edward Nishnic and John Demjanjuk, Jr., have acted as Defendant's agents and/or representatives. (Tr. at 1097-98 (statement of defense counsel); GX 107 at 15, 89-90, and 115-16 (defense counsel objecting to questions to John Demjanjuk, Jr., on the grounds of attorney-client privilege); GX 108 at 22-25 (defense counsel

objecting to questions to Ed Nishnic on the grounds of attorney-client privilege)).

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and venue is proper pursuant to 28 U.S.C. § 1345 (providing district courts with original jurisdiction for civil actions brought by the United States) and 8 U.S.C. § 1451(a) (providing district courts with original jurisdiction for denaturalization actions and establishing venue in district where defendant resides).

2. The Government must prove its case by evidence that is clear, convincing, and unequivocal. *Kungys v. United States*, 485 U.S. 759, 772 (1988).

3. To establish that evidence is authentic, the Government need only present "evidence sufficient to support a finding that the matter in question is what the proponent claims." Fed. R. Evid. 901(a); see *United States v. Koziy*, 728 F.2d 1314, 1321 (11th Cir. 1984), *cert. denied*, 469 U.S. 835 (1984). This burden is slight. *Link v. Mercedes-Benz of North America, Inc.*, 788 F.2d 918, 927 (3d Cir. 1986); see also *United States v. Perez-Montanez*, 202 F.3d 434, 440 n.2 (1st Cir. 2000) (Only a "'reasonable likelihood* that proffered evidence is what it purports to be need be shown to authenticate it"), *cert. denied*, 531 U.S. 886 (2000); *United States v. Pluta*, 176 F.3d 43, 49 (2d Cir. 1999) ("The burden of

authentication does not require proof . . . beyond any doubt that the evidence is what it purports to be."), *cert. denied*, 528 U.S. 906 (1999); *Hamdallah v. Warlick*, 935 F.Supp. 628, 631 n.5 (D.V.I. 1996) (burden of proof for authentication is "not heavy"); *Transclean Corp. v. Bridgewood Services, Inc.*, 101 F.Supp.2d 788, 799 (D. Minn. 2000) (burden for authentication is "slight"); *Pasquotank Action Council, Inc. v. City of Virginia Beach*, 909 F.Supp. 376, 384 (E.D. Va. 1995) ("The burden of proof for authentication is slight."); *Siam Numhong Products Co. Ltd. v. Eastimpex*, 866 F.Supp. 445, 451 (N.D. Cal. 1994) ("The burden of proof for authentication of a document is slight and circumstantial evidence suffices.").

4. "[T]here need only be a *prima facie* showing, to the court, of authenticity, not a full argument on admissibility." *Threadgill v. Armstrong World Industries, Inc.* 928 F.2d 1366, 1375 (3d Cir. 1991); see *United States v. Black*, 767 F.2d 1334, 1342 (9th Cir. 1985), *cert. denied*, 474 U.S. 1022 (1985); *United States v. Jardina*, 747 F.2d 945, 951 (5th Cir. 1984), *cert. denied*, 470 U.S. 1058 (1985). This showing may be accomplished with circumstantial evidence showing that the document in question is what it purports to be. See Fed. R. Evid.

901(b)(4); *see also United States v. Reilly*, 33 F.3d 1396, 1404 (3d Cir. 1994); *United States v. Natale*, 526 F.2d 1160, 1173 (2d Cir. 1975), *cert. denied*, 425 U.S. 950 (1976).

5. The Government need not establish a chain of custody for documentary evidence to satisfy its burden of authenticity, because documents are non-fungible, and "unique, identifiable, and relatively resistant to change." Tr. at 80 (Epstein) (chain of custody less important than other forensic evidence because no risk of contamination), at 235-36 (Stewart) (chain of custody "immaterial in a case like this"); 5 *Weinstein*s Evidence*,

¶ 901.02[3], at 901-15; *United States v. Humphrey*, 208 F.3d 1190, 1204-05 (10th Cir. 2000) (unlike drugs, which are fungible, documents are unique and relatively resistant to change, and thus do not need a perfect chain of custody); *United States v. Hernandez-Herrera*, 952 F.2d 342, 344 (10th Cir. 1991) (applying analysis to INS forms); *United States v. Skelley*, 501 F.2d 447, 451 (7th Cir. 1974) (counterfeit money), *cert. denied*, 419 U.S. 1051 (1974); *United States v. Le Pera*, 443 F.2d 810, 813 (9th Cir. 1971) (counterfeit notes), *cert. denied*, 404 U.S. 958 (1971).

6. Chain of custody need not be shown to establish that

documents are authentic under the ancient documents rule. See, e.g., *United States v. Stelmokas*, 100 F.3d 302, 312 (3d Cir. 1996); *United States v. Kairys*, 782 F.2d at 1379.

7. The Government has met its burden of proving the authenticity of exhibits 1-9, 42, 44-57, 60, 62-73, 76-77, 79-80, 82-83, 86-87 and 103 as ancient documents within the meaning of Federal Rule of Evidence 901(b)(8). See, e.g., *United States v. Hajda*, 135 F.3d 439, 444 (7th Cir. 1998) (authenticating captured German wartime records as ancient documents); see also *Stelmokas*, 100 F.3d at 312; *Kairys*, 782 F.2d at 1379-80; *United States v. Szebinskyj*, 104 F.Supp.2d at 490; *United States v. Lileikis*, 929 F.Supp. at 38; *United States v. Schiffer*, 831 F.Supp. 1166, 1193 n.23 (E.D. Pa. 1993) *aff'd*, 31 F.3d 1175 (3d Cir. 1994); *United States v. Palciauskas*, 559 F.Supp. at 1296, *aff'd*, 734 F.2d 625 (11th Cir. 1984); *Koziy*, 728 F.2d at 1322 (upholding admissibility of Ukrainian police forms under ancient document exception to hearsay rule).

8. Government Exhibits 1-9, 42, 44-57, 60, 62-73, 76-77, 79-80, 82-83, 86-87 and 103 are admissible under Fed. R. Evid. 803(16), the ancient documents exception to the hearsay rule. See, e.g., *Stelmokas*, 100 F.2d at 311-13 (wartime records found

in Lithuanian (former Soviet) archives authentic and admissible under ancient documents rule); *Schiffer*, 831 F.Supp. at 1171, 1194 (military records). *See also Koziy*, 728 F.2d at 1322.

9. Although the postwar statements (Government Exhibits 71, 77, 82, 103) were prepared by government officials, the persons providing the statements signed and adopted them, thus foreclosing any "double hearsay" issue under Fed. R. Evid. 805. *See Hajda*, 135 F.3d at 444.

10. Government*s Exhibits 1-9, 42, 44.1-44.8, 44.10-44.11, 45.1-45.28, 45.30-45.31, 45.33-45.42, 54, 56, 60, 62-65, 67-68A, 76-77, 79-80, 83, and 102-03 are fully certified and/or were presented to the Court in the original. Therefore, they are self-authenticating as Foreign Public Documents under Fed. R. Evid. 902(3) and 902(4) and Fed. R. Civ. P. 44(a).

11. Government*s Exhibits 42, 49-53, 65, and 70-73 are certified copies of public records held in the National Archives in College Park, Maryland, and are thus self-authenticating as certified copies of public records under Fed. R. Evid. 902(3) and 902(4).

12. Government Exhibits 1-9, 42, 44-57, 60, 62-70, 72-73, 76-76A, 79-80, and 83 are admissible as records of governmental offices or agencies, setting forth the activities of the office

or agency, or matters observed pursuant to duty imposed by law as to which matters there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. See Fed. R. Evid. 803(8); *Szehinskyj*, 104 F.Supp.2d at 491-92; *Palciauskas*, 559 F.Supp. at 1296 n.3.

13. The Government has met its burden of proving the authenticity of exhibits 1-9, 42, 44-57, 60, 62-73, 76-77, 79-80, 82-83, and 103, as they possess "distinctive characteristics" which confirm that they are, indeed, what they purport to be. See Fed. R. Evid. 901(b)(4); see also *Reilly*, 33 F.3d at 1404; *United States v. Helm*, 769 F.2d 1306, 1312 (8th Cir. 1985); *Natale*, 526 F.2d at 1173.

14. The Government has met its burden of proving the authenticity of exhibits 3-9 through comparisons with other authenticated documents by experts Gideon Epstein, Larry Stewart, Tom Smith, and Dr. Charles W. Sydnor, Jr. See Fed. R. Evid. 901(b)(3).

15. The Government has met its burden of proving the authenticity of exhibits 2-9, 42-47, 54-65, 67-68, 71-73, 76-77, 79-83, and 103, as the testimony of Gideon Epstein, Larry Stewart, Tom Smith, Dr. Bruce Menning, Leo Curry, and Dr. Charles W. Sydnor, Jr., provides an adequate scientific and

historical foundation from which this Court "could legitimately infer that the evidence is what the [Government] claims it to be" under Fed. R. Evid. 901(a), 901(b)(1) and 901(b)(3). *In re Japanese Electronic Products Antitrust Litigation*, 723 F.2d 238, 285 (3d Cir. 1983), *rev'd on other grounds*, 475 U.S. 574 (1986); see *Koziy*, 728 F.2d at 1321 (testimony by a historian who had seen other similar documents and by a forensic document examiner who stated that the documents were not executed after their respective dates).

16. The Government has met its burden of proving the authenticity of exhibits 10-19, 21, 23-27, 31-33, 104-05, and 110-14, as the testimony of Gideon Epstein, Larry Stewart, Tom Smith, Dr. Bruce Menning, Leo Curry, and Dr. Charles W. Sydnor, Jr., provides an adequate scientific and historical foundation from which this Court could legitimately infer that the evidence is what the Government claims it to be under Fed. R. Evid. 901(b)(1).

17. Government*s Exhibits 34-35 and 37-40 are admissible as summary exhibits pursuant to Fed. R. Evid. 1006. Government*s Exhibit 36 is admissible as a pedagogic summary of evidence already admitted. *United States v. Bray*, 139 F.3d 1104, 1111 (6th Cir. 1998); *United States v. Scales*, 594 F.2d 558, 563 (6th Cir. 1978), *cert. denied*, 441 U.S. 946 (1979).

18. Defendant has admitted the authenticity of Government Exhibit 1.3 and 1.5, and accordingly the remainder of Government Exhibit 1 is admissible under Fed. R. Evid. 106.

19. Defendant has admitted the authenticity of Government Exhibits 2.2, 2.3, and 2.4, and accordingly the remainder of Government Exhibit 2 is admissible under Fed. R. Evid. 106.

20. Government Exhibit 88 is Defendant*s Answers to Plaintiff*s Request for Admission, filed with the court on or about January 14, 1980, and is admissible under Fed. R. Evid. 901(b)(7), 902(4), 801(d)(2), and 803(8).

21. Government Exhibits 89, 92, 93, 98, and 100 are prior statements of Defendant and are admissible under Fed. R. Evid. 901(b)(7), 902(4), 801(d)(2), and 803(8).

22. Government Exhibits 90-91 have been previously admitted by this Court under Fed. R. Evid. 804(b)(1).

23. Government Exhibits 76, 76A, 79, and 79A are not

offered for the truth of the matters asserted therein regarding Defendant*s wartime service, but to show that the KGB did not forge documents to implicate Defendant, as it already possessed the Trawniki service identity pass (Government Exhibit 3) and Flossenbürg transfer roster (Government Exhibit 6) by 1948, that the KGB was not looking for Defendant based on service in Shandruk*s or Vlasov*s Army, and that the KGB was not looking for Defendant*s cousin as the Iwan Demjanjuk assigned Trawniki identification number 1393.

24. Government Exhibit 101, the letter from the Ukrainian procuracy, satisfies Fed. R. Evid. 901(b)(7) and 803(6), 803(7), and 803(10) regarding the military records of Defendant and the lack thereof for Ivan Andreevich Demjanjuk.

25. Government Exhibit 102, the birth record for Ivan Andreevich Demjanjuk, satisfies Fed. R. Evid. 901(b)(7) and 803(9).

26. Government Exhibit 106, the article "Punishment Will Come," satisfies Fed. R. Evid. 902(6), and is not offered for the truth of the matters asserted therein, but to show that Defendant was aware as of 1977 that Ignat Danilchenko claimed Defendant served at Sobibor and Flossenbürg, eight years before Danilchenko died.

27. Government Exhibits 107 (deposition of John

Demjanjuk, Jr.) and 108 (deposition of Edward Nishnic) satisfy Fed. R. Evid. 801(d)(2) as admissions of representatives of a party-opponent, and contain admissions Defendant himself made to his family. See *Berlin v. Celotex Corp.*, 912 F.2d 465, 1990 WL 125360 at *2 (6th Cir. Aug. 29, 1990); *Hanson v. Waller*, 888 F.2d 806, 814 (11th Cir. 1989); *United States v. Da Silva*, 725 F.2d 828, 831-832 (2d Cir. 1983) (interpreter); see also GX 107 at 15, 89-90, 115-16, and Tr. at 1097-98 (defense counsel objecting to questions to John Demjanjuk, Jr., on the grounds of attorney-client privilege); GX 108 at 22-25 (defense counsel objecting to questions to Ed Nishnic on the grounds of attorney-client privilege).

28. Government Exhibit 109 (deposition of Dobrowolskyj) satisfies Fed. R. Civ. P. 32(a)(3) and Fed. R. Evid. 804(b)(1).

29. Government Exhibits 110 through 114 (expert reports of Dr. Menning and Dr. Sydnor) satisfy Fed. R. Evid. 801(d)(1)(B) (prior consistent statements), and the entire reports are admissible under Fed. R. Evid. 106. See *Engebretsen v. Fairchild Aircraft Corp.*, 21 F.3d 721, 729-30 (6th Cir. 1994) (impeachment of an expert through expert report entitles opposing party to introduce other statements in the report to rebut the charge of inconsistency and bias," and whole report

is admissible under Rule of Completeness, Fed. R. Evid. 106).

30. A prospective citizen must strictly comply with all congressionally imposed prerequisites to the acquisition of citizenship. *United States v. Dailide*, 227 F.3d 385, 389 (6th Cir. 2000); see also *Fedorenko v. United States*, 449 U.S. at 506 (1981) ("there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship").

31. Where there has not been "strict compliance" with all congressionally imposed prerequisites to the acquisition of citizenship, naturalization is illegally procured. See *Fedorenko*, 449 U.S. at 505-06; *Dailide*, 227 F.3d at 389.

32. Where naturalization is "illegally procured," a grant of citizenship must be revoked. 8 U.S.C. § 1451(a); *Fedorenko*, 449 U.S. at 506; *Dailide*, 227 F.3d at 389..

33. As a prerequisite to obtaining naturalization, an individual must have entered the United States under a valid visa. See, e.g., *Fedorenko*, 449 U.S. at 514-15; see also 8 U.S.C. § 1427(a)(1).

34. To meet its burden, the Government need not present admissions by a defendant or testimony from live witnesses who confirm a defendant's Nazi service. See, e.g., *Hammer v.*

I.N.S., 195 F.3d 836, 843 (6th Cir. 1999) (finding assistance in persecution under the Holtzman Amendment, 8 U.S.C. § 1182(a)(3)(E), in the absence of admissions or fact witness testimony), *cert. denied*, 528 U.S. 1191 (2000); *United States v. Szebinskyj*, 104 F.Supp.2d at 494 (finding that defendant assisted in persecution despite lack of "live evidence"); *United States v. Baumann*, 764 F.Supp. 1335 (E.D. Wis. 1991) (finding that Baumann "acquiesced in activities or conduct contrary to civilization and human decency" on behalf of the Axis countries during World War II under 22 C.F.R. §§ 53.32-33 (1949) in the absence of admissions or fact witness testimony), *aff'd*, 958 F.2d 374 (7th Cir. 1992), *cert. denied*, 506 U.S. 831 (1992); *United States v. Tittjung*, 753 F.Supp. 251, 256 (E.D. Wis. 1990) (finding assistance in persecution based on Nazi wartime documents), *aff'd*, 948 F.2d 1292 (7th Cir. 1991), *cert. denied*, 505 U.S. 333 (1992).

35. An individual seeking to enter the United States under the Displaced Persons Act of 1948, Pub. L. No. 80-774, ch. 647, 62 Stat. 1009, *as amended*, June 16, 1950, Pub. L. No. 81-555, 64 Stat. 219 ("DPA"), first had to be deemed "of concern" to the International Refugee Organization ("IRO"). Tr. at 559 (reading into record Defendant*s Responses to Plaintiff*s Third

Requests for Admissions, No. 3); Tr. at 904 (Curry) (applicant must first be determined "of concern" to IRO).

36. Annex I, Part II of the IRO Constitution identified certain categories of persons who were not "the concern" of the IRO, including, "Any . . . persons who can be shown: (a) to have assisted the enemy in persecuting civil populations of countries . . ." (62 Stat. 3051, 3052) Tr. at 560 (reading into record Defendant*s Responses to Plaintiff*s Third Requests for Admissions, No. 6); Tr. at 906 (Curry) (agreeing that applicant who assisted Nazis in persecution of civilians would not have been "of concern" to IRO); Tr. at 936 (Segat) (assisting enemy in persecution "would make [applicant] prima facie ineligible" under IRO Constitution); see also *United States v. Koreh*, 59 F.3d 431, 438 (3d Cir. 1995).

37. Under the DPA, visas could not be granted to anyone who assisted in the persecution of any person because of race, religion, or national origin. 64 Stat. 219, 227. Tr. at 918 (Curry) ("the [Displaced Persons] Act does state specifically that no visa may be issued to any person who has aided or assisted in the persecution of civilians because of race, religion or national origin. That would be reason for a determination, ineligible."); Tr. at 949 (Henrikson) (DPA "was not intended to benefit those who had aided, abetted and helped

the Germans in their subjugation of Europe and their persecution of civilian population. . . ."); see also *Koreh*, 59 F.3d at 438.

38. Voluntariness is not an element of an assistance in persecution charge under Section 13 of the DPA. In interpreting the assistance in persecution provision of Section 13 of the DPA, the Supreme Court has stated, "[A]n individual's service as a concentration camp armed guard--whether voluntary or involuntary--made him ineligible for a visa." *Fedorenko*, 449 U.S. at 512.

39. Service as an armed guard at a Nazi concentration camp constitutes assistance in persecution within the meaning of Section 13 of the DPA. See, e.g., *Fedorenko*, 449 U.S. at 512; *United States v. Breyer*, 41 F.3d 884, 890 (3d Cir. 1994); *United States v. Kairys*, 782 F.2d at 1378; *United States v. Schmidt*, 923 F.2d 1253, 1259 n.9 (7th Cir. 1991), cert. denied, 502 U.S. 921 (1991); *United States v. Linnas*, 527 F.Supp. 426 (E.D.N.Y. 1981), aff'd, 685 F.2d 427 (2d Cir. 1982).

40. As the Supreme Court has held, armed Nazi concentration camp guards assisted the enemy in persecuting civilian populations. *Fedorenko*, 449 U.S. at 512.

41. As explained by the United States Court of Appeals for the Seventh Circuit,

That Jews were persecuted at [concentration camps] is not in question, and that as an armed SS guard . . . Kairys "assisted" in that persecution, whether or not he committed a specific atrocity by beating a Jewish inmate to death or otherwise mistreating him beyond what is implicit in serving as a guard at such a camp, is settled in this circuit . . . If the operation of such a camp were treated as an ordinary criminal conspiracy, the armed guards, like the lookouts for a gang of robbers, would be deemed coconspirators, or if not, certainly aiders and abettors of the conspiracy.

Kairys v. I.N.S., 981 F.2d 937, 942-43 (7th Cir. 1992), *cert. denied*, 507 U.S. 1024 (1993).

42. It is not a required element of an assistance in persecution claim under Section 13 of the DPA that a defendant engaged in "personal" acts of persecution. *See United States v. Ciurinskas*, 148 F.3d 729, 734 (7th Cir. 1998) ("Even if Ciurinskas had not personally participated [in persecution], his service in the 2nd Battalion is sufficient to constitute assistance in persecution"); *Breyer*, 41 F.3d at 890 (the Section 13 "exclusion does not require willing and personal participation in atrocities," as "a person may be ineligible simply because he falls within an excludable category of persons"); *United States v. Sokolov*, 814 F.2d 864, 874 (2d Cir.

1987) (writer of propaganda assisted in persecution under Section 13 by creating a climate of opinion in which such persecution is acceptable, although "there was no showing of actual persecution of Jews in the . . . area"), *cert. denied*, 486 U.S. 1005 (1988); *United States v. Osidach*, 513 F. Supp at 99; *see also Hammer v. I.N.S.*, 195 F.3d at 843 (under Holtzman Amendment to Immigration and Nationality Act, a showing of personal assistance in persecution is not required).

43. An individual*s service in a unit dedicated to exploiting and exterminating civilians on the basis of race or religion constitutes assistance in persecution within the meaning of the DPA. *See Ciurinskas*, 148 F.3d at 734 ("Even if Ciurinskas had not personally participated, his service in [a group that performed mass executions of Jews] is sufficient to constitute assistance in persecution, as set out in § 2(b) of the DPA and the IRO Constitution. . . . We see little difference between being a concentration camp guard . . . and being a member of a force dedicated to the extermination . . . of civilians as was Ciurinskas."); *Osidach*, 513 F.Supp. at 99 (Ukrainian policeman, against whom no specific persecutory acts had been proven, assisted in persecution); *see also United States v. Dailide*, 953 F.Supp. 192, 196-97 (N.D. Ohio 1997) (Matia, J.), *aff'd*,

227 F.3d 385 (6th Cir. 2000).

44. Defendant's service with the Guard Forces of the SS and Police Leader in Lublin District (at Trawniki, Majdanek, and Sobibor), and with the SS Death's Head Battalion at Flossenbürg Concentration Camp constituted assistance in the persecution of persons because of race, religion, or national origin. Tr. at 918-19 (Curry); *see, e.g., United States v. Tittjung*, 235 F.3d 330, 341, n.8 (7th Cir. 2000) (SS Death's Head Battalion guard at concentration camp), *cert. denied*, 121 S. Ct. 254 (2001); *Schmidt*, 923 F.2d at 1259 (SS Death's Head Battalion guard at concentration camp); *Hajda*, 963 F.Supp. at 1461; *Schiffer*, 831 F.Supp. at 1177-80 (guard service at Majdanek, Flossenbürg (subcamp), Trawniki, and elsewhere); *United States v. Leprich*, 666 F.Supp. at 969 (SS Death's Head Battalion guard at concentration camp); *see also Fedorenko*, 449 U.S. at 512 (concentration camp guard service renders applicant ineligible under DPA); *Hammer*, 195 F.3d at 843-44 (affirming deportation order of SS Death's Head Battalion guard at concentration camp).

45. The Government has proven by clear, convincing, and unequivocal evidence that Defendant assisted in the persecution of civilian populations during World War II.

46. Because of his assistance in persecution, Defendant

was ineligible for a visa pursuant to DPA § 13, 64 Stat. 219. His entry to the United States for permanent residence in 1952 on the basis of a visa issued under the DPA was therefore unlawful and his naturalization as a United States citizen was illegally procured.

47. Section 13 of the DPA prohibited the issuance of a visa to any applicant who "is or has been a member of or participated in any movement which is or has been hostile to the United States." 64 Stat, at 227. Tr. at 921-22 (Curry) (participation in hostile movement "would be sufficient to determine the applicant ineligible" to immigrate under the DPA); *see also United States v. Negele*, 222 F.3d 443, 447 (8th Cir. 2000), *cert. denied*, 531 U.S. 1153 (2001); *Koreh*, 59 F.3d at 438.

48. The degree of participation or involvement in the hostile movement is irrelevant. *Koreh*, 59 F.3d at 444-45 (citing *Osidach*, 513 F.Supp. at 72).

49. The Government is not required to prove that a defendant's service in a hostile movement was "willing." *See Ciurinskas*, 148 F.3d at 729 (voluntariness is not an element of a hostile movement claim); *but see Koreh*, 59 F.3d at 444 (indicating in dictum, despite contrary authority, that unless

the government shows that a defendant actually participated in a hostile movement, it must prove that a defendant "willingly" belonged to the movement in a denaturalization action under Section 13).

50. The legislative history of the movement hostile provision of Section 13 reveals no evidence that Congress contemplated that membership in the movement had to be voluntary.

51. Unlike certain other sections of the DPA, the movement hostile provision of Section 13 (like the assistance-in-persecution provision of Section 13) does not include a voluntariness element on its face. Compare DPA § 2(a) with DPA § 13.

52. In *Fedorenko*, the Supreme Court ruled that because Congress included a voluntariness element in other provisions of the DPA, its omission from the assistance-in-persecution provision was deliberate, which "compels the conclusion that the statute made all who assisted in the persecution of civilians ineligible for visas." See *Fedorenko*, 449 U.S. at 512. The movement hostile provision of Section 13 should be construed similarly.

53. The Government has proven that Defendant actually participated in a movement hostile to the United States and to the form of government of the United States through his service at Sobibor, at Majdanek, with the Guard Forces of the SS and Police Leader in Lublin District (at Trawniki, Majdanek, and Sobibor), and with the SS Death's Head Battalion at Flossenbürg

Concentration Camp. Tr. at 920-21 (Curry); *see Negele*, 222 F.3d at 447 (finding participation in movement hostile because defendant was a member of the Waffen SS and "concentration camp guards participated in a movement hostile to the United States"); *Breyer*, 41 F.3d at 890-91; *Hajda*, 963 F.Supp. at 1461; *see also Stelmokas*, 100 F.3d at 305; *Koreh*, 59 F.3d at 431; *Sokolov*, 814 F.2d at 864; *Koziy*, 728 F.2d at 1314.

54. Although such a finding is not a prerequisite to a determination that Defendant was a member of a hostile movement, the Government has proven that Defendant's membership in the "Guard Forces of the SS and Police Leader in Lublin District" and the SS Death's Head Battalion at Flossenbürg was "willing," as he was paid, he was eligible for leave and benefits, and there is no evidence he sought to desert or flee. Tr. at 9 (Deft.'s Opening Statement) (the Iwan Demjanjuk who served the Germans "was paid as a guard"); Tr. at 442, 476 (Sydnor) (Trawniki recruits were paid and were eligible for leave and benefits; a large number of Trawniki-trained guards deserted during the war); GX 35, 60 (reflecting desertions by Sobibor guards).

55. The Government has established by clear, convincing, and unequivocal evidence that Defendant was a member of and participant in a movement hostile to the United States or to

the form of government of the United States.

56. Because of his membership and participation in a movement hostile to the United States, Defendant was ineligible to immigrate to the United States pursuant to DPA § 13. His entry to the United States for permanent residence in 1952 was therefore unlawful and his naturalization as a United States citizen was illegally procured. Tr. at 920-21 (Curry); *see also Negele*, 222 F.3d at 447.

57. Section 10 of the DPA barred from immigration any person who willfully misrepresented material facts to gain admission to the United States as a displaced person. 62 Stat. at 1013; *see* Tr. at 914 (Curry) ("Any person or any applicant who makes a willful misrepresentation for the purpose of gaining admission to the United States under the provisions of the Displaced Persons Act is ineligible."); *see also Fedorenko*, 449 U.S. at 495; *United States v. Kowalchuk*, 773 F.2d 488, 493 (3d Cir. 1985) (*en banc*), *cert. denied*, 475 U.S. 1012 (1986); *United States v. Schellong*, 717 F.2d 329, 334 (7th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984).

58. To demonstrate that an applicant violated Section 10 of the DPA, the Government must also show that a willful misrepresentation or concealment was material; a

misrepresentation or concealment is material if it has a natural tendency to influence the relevant decision-maker's decision. It is not necessary for the Government to prove that Defendant would not have received a visa if he had not made the misrepresentation or concealment. *Kungys*, 485 U.S. at 771.

59. A willful and material misrepresentation to the IRO is not actionable *per se* under Section 10 of the DPA, but an applicant's misrepresentation to the agency during the immigration process, when uncorrected by the applicant and relied on by the DPC or United States Vice Consul in making an eligibility determination under the DPA, violates Section 10. See *Ciurinskas*, 148 F.3d at 734-35; *Kowalchuk*, 773 F.2d at 492-94; *Osidach*, 513 F.Supp. at 100-02.

60. A willful and material misrepresentation to a United States Vice Consul, made to gain admission to the United States, is actionable *per se* under Section 10 of the DPA. See *Fedorenko*, 449 U.S. at 510 (false statement in a visa application grounds for denaturalization); *Stelmokas*, 100 F.3d at 315-16, 320; *Osidach*, 513 F.Supp. at 100-02; see also *Ciurinskas*, 148 F.3d at 734-35.

61. When applying for IRO assistance, Defendant misrepresented and concealed his wartime residences and

activities, which constituted misrepresentations and concealments of his wartime employment and residences for the purpose of gaining admission into the United States. Tr. at 554-56 (reading into record Defendant*s Supplemental Responses to Plaintiff*s Second Set of Requests For Admissions, filed on April 14th of 1980).

62. When applying for IRO assistance, Defendant misrepresented and concealed his service at Trawniki, at Sobibor, at Majdanek, with the Guard Forces of the SS and Police Leader in Lublin District, and with the SS Death*s Head Battalion at Flossenbürg Concentration Camp, which constituted misrepresentations and concealments of his wartime employment and residences for the purpose of gaining admission into the United States.

63. The DPC relied on the findings by the IRO regarding Defendant*s wartime whereabouts and activities, and on the IRO*s finding that Defendant was "of concern" to the IRO. Tr. at 909 (Curry) (confirming that as a DPC case analyst, he relied on IRO interviews); *see also Ciurinskas*, 148 F.3d at 734-35 (misrepresentations to the IRO, CIC, and Vice Consul); *Kowalchuk*, 773 F.2d at 497; *Leprich*, 666 F.Supp. at 971; *Osidach*, 513 F.Supp. at 101-02.

64. Defendant's misrepresentations and concealment of his wartime residences and employment to the IRO were material, because disclosure of such activities would have resulted in his not being found "of concern" to the IRO, which had a natural tendency to affect DPC Analyst Curry's decision to grant Defendant displaced person status. Tr. at 906 (Curry) (if applicant were found not "of concern" to IRO, application would never reach DPC for further determination); *see also Fedorenko*, 449 U.S. at 514-15; *Stelmokas*, 100 F.3d at 313-14; *Kowalchuk*, 773 F.2d at 497; *Ciurinskas*, 148 F.3d at 734-35; *Leprich*, 666 F.Supp. at 971.

65. Defendant misrepresented and concealed his wartime residences for the purpose of gaining admission into the United States during his interview with U.S. Vice-Consul Harold Henrikson, when he listed his places of residence as Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945 on his Application for Immigrant Visa and Alien Registration, and swore to the veracity of the information on his application, without disclosing that he resided at Trawniki, Okzow, Lublin, and Flossenbürg, and that he resided at Sobibor from March 1943 until approximately October 1943.

66. Defendant's misrepresentations and concealments were material, because Defendant's disclosure of his actual activities would have had a natural tendency to affect Mr. Henrikson's decision to approve Defendant's visa. Tr. at 948-49 (Henrikson) (if Defendant had revealed his training at Trawniki, Henrikson "would [have] den[ied] the visa"; if Defendant had revealed service at Sobibor, a Nazi extermination camp, "he would have been denied a visa"); *see also Fedorenko*, 449 U.S. at 514-15; *Stelmokas*, 100 F.3d at 313-14; *Kowalchuk*, 773 F.2d at 497.

67. When Defendant listed his places of residence as Sobibor, Poland, from 1936 to 1943, Pilau, Danzig, from 1943 to September 1944, and Munich, Germany, from September 1944 to May 1945, on his Application for Immigrant Visa and Alien Registration, and swore to the veracity of the information on his application, he knowingly misrepresented material facts within the meaning of § 10 of the DPA. If he had stated that the visa application was wrong and that he was in Shandruk's Army or Vlasov's Army during the time periods listed, as he says today, Mr. Henrikson would not have approved his visa. Tr. at 946-47 (Henrikson) (if Defendant had given different account of his wartime whereabouts and employment during visa processing, "there would be a discrepancy there and no visa

would be issued.").

68. Because of his knowing misrepresentation of material facts to the IRO, which were relied on by the DPC, and because his knowing misrepresentation of material facts to the DPC and Vice Consul, Defendant was ineligible to immigrate to the United States pursuant to DPA § 10. His entry to the United States for permanent residence in 1952 was therefore unlawful and his naturalization as a United States citizen was illegally procured and must be revoked.

JUDGE PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFICATE OF SERVICE

A copy of this Findings of Fact and Conclusions of Law has been sent by regular United States mail this 21st day of February, 2002, to Michael Anne Johnson, Esq., Assistant U.S. Attorney, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114-2600; Edward A. Stutman, Esq., Office of Special Investigations, Criminal Division, U.S. Department of Justice, 1001 G Street, N.W., Suite 1000, Washington D.C. 20530; Patty Merkamp Stemler, Esq., Chief, Appellate Section,

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JUDGE PAUL R. MATIA
CHIEF JUDGE
UNITED STATES DISTRICT COURT